

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
DOCKET NO. 5:09CR27-RLV**

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
BERNARD VON NOTHAUS	)	
_____	)	

In Re: PETITION OF DALE MCAVEY

**ORDER GRANTING IN PART AND DISMISSING IN PART PETITION**

**WHEREAS**, on November 10, 2014, the Court entered a Memorandum and Order (Doc. 270) affirming the jury’s verdicts of guilty to Counts One, Two, and Three in the Superseding Bill of Indictment.

**WHEREAS**, on February 25, 2015, the Court entered the Amended (Third) Preliminary Order of Forfeiture (Doc. 297) forfeiting certain coins, metals, and other property to the United States.

**WHEREAS**, Dale McAvey has filed a Petition, (Doc. 556), claiming one-hundred two and four (102.4) ounces of silver based on warehouse receipts, and the United States has stated that it does not oppose that part of his Petition.

**WHEREAS**, the Petitioner has also claimed “interest” based on “pain” and “agony,” and the United States has moved to dismiss that other part of his Petition.

**WHEREAS, THE COURT FINDS** that the Petitioner’s claim of “interest” is not a legal interest provided for under 21 U.S.C. § 853(n)(6), and, therefore, the Petitioner has not stated a claim and does not have standing to adjudicate that part of his Petition.

**NOW, IT IS THEREFORE ORDERED**, pursuant to Fed. R. Crim. P. 32.2(c)(1)(A) and 21 U.S.C. § 853(n)(6), the Court grants the Petitioner's claim for one-hundred two and four (102.4) ounces of silver and dismisses the Petitioner's claim for interest.

**IT IS FURTHER ORDERED THAT:**

1. The Petitioner is ordered to send the original warehouse receipts to the United States at the address:

United States v. Bernard Von Nothaus  
Attn: Thomas R. Ascik  
Office of the United States Attorney  
100 Otis Street, Room 233  
Asheville, North Carolina 28801

2. Distribution of property by the United States to the Petitioner shall not occur until a Final Order of Forfeiture is entered by the Court.

**SO ORDERED.**

Signed: December 10, 2015



Richard L. Voorhees  
United States District Judge

